77-1178

Supreme Court, U. S.
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IN THE

Supreme Court of the United States

March Term, 1978

No. 77-4006

JACK P. QUINN

Petitioner

v.

KANSAS POWER AND LIGHT COMPANY

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

Jack P. Quinn
908 Lincoln
Wamego, Kansas 66547
In his own behalf

March, 1978

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Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

Jack P. Quinn prays that a writ of certiorari issue to review the judgment of the Circuit Court of Appeals for the Tenth Circuit entered on December 30, 1977 with appeal to overrule dismissal of the case, Jack P. Quinn,

Plaintiff, versus Kansas Power and Light Company, Defendant, case No. 77-4006. The case was dismissed by United States District Assigned Judge George Templar Senior in the United States District Court for the District of Kansas, without a hearing, or a trial by jury as requested, instead only that I, Jack P. Quinn, answer by letter to the United States District Court for the District of Kansas by mail to the allegations made by the attorneys that represented Kansas Power and Light Company, which I, Jack P. Quinn, did answer by mail, but the United States District Assigned Judge George Templar Senior did on May 14, 1977, dismiss the case, Jack P. Quinn, Plaintiff, versus Kansas Power and Light Company, Defendant, case no. 77-4006, stating that Jack P. Quinn, Plaintiff has stated no provable claim and Defendant's action to dismiss must be sustained. This type of a judge's decision is not new, as we review history this type of court decision was common everyday court decisions in Nazi Germany. Jack P. Quinn filed, on June 10, 1977, an appeal to the United States Court of Appeals for the Tenth Circuit. On December 30, 1977, the United States Court of Appeals for the Tenth Circuit, The Honorable Oliver Seth, Circuit Judge, Honorable John C.

Pickett, Circuit Judge, and Honorable Robert R. McWilliams, Circuit Judge, ordered that the judgment of the United States District Court for the District of Kansas is affirmed for the reasons cited in the Order Sustaining Motion to Dismiss filed May 23, 1977.

JURISDICTION

Jack P. Quinn is an American citizen of the United States of America and as such is guaranteed all the rights of an American citizen as provided by the Constitution of the United States of America as follows:

Section 2. Jurisdiction Of United States Courts

The Judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority.

Section 10. Powers Forbidden To The States

No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of

attainder. ex post facto law, or bill impairing the obligation of contracts, or grant any title of nobility.

Section 2. Privileges Of Citizens

The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

Amendment XIV. Rights of Citizens

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Amendment VII. Jury Trial In Civil Cases

In Suites at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Article VI. General Provisions

This Constitution, and the laws of the United States, which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding.

QUESTION PRESENTED

The question presented is a denial of due process where:

1. I, Jack P. Quinn, hereby on January 7, 1977, file a law suit in federal court against Kansas Power and Light Company, 818 Kansas Avenue, Topeka, Kansas. I, Jack P. Quinn, am filing this law suit in federal court against Kansas Power and Light Company on the grounds that Kansas Power and Light Company's claim of the power of eminent domain is unconstitutional. I, Jack P. Quinn, am requesting trial by jury. I, Jack P. Quinn, request the federal court to force Kansas Power and Light Company to pay for any damage to property and court costs.

2. Jack P. Quinn was denied a hearing.

3. Jack P. Quinn was denied a trial by jury as requested.

STATEMENT

Kansas Power and Light Company's use of their claim of the power of eminent domain for the purposes of condemning and acquiring land for right-of-way is unconstitutional by breaking the following laws of the Constitution of the United States of America:

Article 1. Legislative Department

Section 10. Powers Forbidden To The States

No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title or nobility.

No state shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imports, laid by any state on imports and exports, shall be for the use of

the Treasury of the United States; and all such laws shall be subject to the revision and control of the Congress. No state shall without the consent of Congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

Article III. Judicial Department

Section 2. Jurisdiction Of United States Courts

The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admirality and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more states; between a state and citizens of another state; between citizens of different states; between citizens of the same state claiming lands under grants of different states, and between a state or the citizens thereof, and foreign States, citizens or subjects.

In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the supreme court shall be original jurisdiction. In all the other cases before mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

The trial of all crimes, except in cases of impeachment, shall be by jury, and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the Congress may by law have directed.

Amendment XIV. Rights Of Citizens

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Article VI. General Provisions

All debts contracted and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the confederation.

This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding.

The senators and representatives before-mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

Amendment VII. Jury Trial In Civil Cases

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall

be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

1. Article 1. Section 10. No state can pass any law impairing the obligation of contracts. Therefore eminent domain is unconstitutional, because it does impair the obligation of contracts. No state can enter into any agreement or compact with another state; here again Kansas Power and Light Company has violated the Constitution of the United States of America by entering into a compact with the State of Missouri; letting corporations from the State of Missouri own a share of the new electrical generating plant now being constructed in the State of Kansas.

2. Article III. Section 2. The judicial power of the federal courts shall extend to all cases. Citizens of the United States of America shall have the right to appeal to the Supreme Court of the United States of America.

3. Amendment XIV. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States. Eminent domain is unconstitutional, because it does abridge the privileges and

immunities of the citizens and landowners in the State of Kansas.

4. Article VI. The Constitution of the United States shall be the supreme law of the United States and the judges in every state shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding. No State can pass any law which is contrary to the Constitution of the United States of America and eminent domain is contrary to the Constitution of the United States of America.

5. Amendment VII. Guarantees the right to trial by jury in civil cases when the value in controversy shall exceed twenty dollars.

SUMMARY

Kansas Power and Light Company asks that this case be dismissed because the Plaintiff, Jack P. Quinn, has no cause of court action against Kansas Power and Light Company. These and other statements from Kansas Power and Light Company's Attorneys are of course as always untrue allegations.

1. First my mother and father, Mr. Charles W. Quinn and Mrs. Mary Jane Quinn, bought this land in question for a fair price, according to the value of land in that calendar year. They were able to put down as payment on the land only a small amount of cash leaving the land heavily mortgaged with the mortgage company. My father, Charles W. Quinn, suffered a massive stroke which hospitalized Charles W. Quinn on December 22, 1950, leaving Charles W. Quinn completely paralyzed on Charles W. Quinn's left side and bedridden for the remainder of Charles W. Quinn's life, which ended on October 13, 1962.

When Charles W. Quinn was released from the hospital for the first time after suffering a massive stroke on December 22, 1950. The sons of Charles W. Quinn and Mary Jane Quinn gathered at the family home of Charles W. Quinn and Mary Jane Quinn, but when they were told that Charles W. Quinn was heavily in debt and that everything he owned was mortgaged to the highest level the mortgage company would allow, his sons turned and walked out of the home, leaving Charles W. Quinn completely paralyzed on his left side and bedridden for the remainder of Charles W. Quinn's life. All except one

son, Jack P. Quinn. Jack P. Quinn stayed and picked up the cross of Charles W. Quinn and Mary Jane Quinn and has taken care of them from that day on and paid all legal debts both large and small that were owed by Charles W. Quinn and Mary Jane Quinn. Kansas Power and Light Company's claims that Jack P. Quinn has no legal court action against Kansas Power and Light Company, notwithstanding.

2. Secondly, if Kansas Power and Light Company had continued on their Southwestern direction pattern like they were building their transmission line, then Kansas Power and Light Company would not have come within several thousand feet of the land owned by Mary Jane Quinn. Instead, Kansas Power and Light Company's transmission line would have gone across land North of the township road North of the land owned by Mary Jane Quinn. Instead of Kansas Power and Light Company's transmission line continuing in a Southwestern direction when its transmission line came to land owned by Carl Stitch, Kansas Power and Light Company's transmission line turns and goes South, then turns and goes West across land owned by neighbors South of land owned by Carl Stitch, including land owned by my mother, Mary

Jane Quinn. If Kansas Power and Light Company's claim of eminent domain is so constitutional, why didn't Kansas Power and Light Company continue with their transmission line in a Southwestern direction and go across land owned by Carl Stitch as they should have done. Or is there a possibility that the transmission line being constructed by Kansas Power and Light Company was opposed by Carl Stitch because the transmission line would create a hazard and decrease the market value of the land owned by Carl Stitch. Another point in question, why didn't Kansas Power and Light Company continue on across Carl Stitch's land, which would have the transmission line on the high ground which is far better suited to support the transmission line support poles and the heavy weight of the transmission line cables. Instead, Kansas Power and Light Company's transmission line turns South and detours around Carl Stitch's land. When the Kansas Power and Light Company's transmission line turns South when it comes to Carl Stitch's land, the transmission goes South, instead, on marshy and swampy land and I question if this type of land can support and keep the transmission line in stable operating condition. I also question the reliability of the State Courts in the State

of Kansas. John Brookens, who is the district judge in Pottawatomie County, Kansas, when John Brookens was an attorney in Westmoreland, Kansas, and was hired to fill out Jack P. Quinn's income tax. John Brookens did not take out one penny for Jack P. Quinn's taking care of his paralyzed father or Jack P. Quinn's mother, Mary Jane Quinn. Instead, in one year when Jack P. Quinn received $9,000.00 in wages while working on construction, John Brookens had Jack P. Quinn pay $3,000.00 in income taxes.

3. Again Kansas Power and Light Company's attorneys make another untrue statement, when they state that the power of eminent domain is recognized in the Constitution of the United States of America by the Fifth Amendment. This, again, is just one more of the many false allegations made by the attorneys in representing Kansas Power and Light Company.

4. The question now is why were the people that owned land where Kansas Power and Light Company is now building the large electrical generating plant not given a trial by jury to see that the land owners were given a fair price for their land. Instead, Kansas Power and Light Company claimed eminent domain and took the land by

condemn procedure and paid less than a fair market price. This did not happen when the United States government took land for Tuttle Creek Reservoir. Instead, many land owners did have trial by jury and got a very fair price for their land. Let us take one case in particular, Springer, an attorney in Manhattan, Kansas, received over $500,000.00 for his land that was in the Tuttle Creek Reservoir. How did Springer, the attorney, get possession of the land? Simply by having the real owner, an uneducated man by the name of Brewbaker, sign his name to papers prepared by Springer, and Springer in turn, gave Brewbaker a five dollar bill and took possession of the land. As a matter of fact, Springer is the same attorney who schooled Richard D. Rogers, the United States District Judge in the United States District Court for the District of Kansas, in Topeka, Kansas, in the code of justice.

5. Now the question is how did eminent domain get passed into law in the State of Kansas and what was the reason for eminent domain to be passed into a State law? Eminent domain was passed into a law in the State of Kansas by the corporations with one purpose in mind in an attempt to abridge the Constitution of the United

States of America and to go around the rights of the American citizens that are guaranteed by the Constitution of the United States of America. The corporations use a very simple formula; they hire lobbyists to go meet with members of the legislature and to give the legislators money or expensive gifts in order to persuade the legislators to vote their bill in the legislature into a State law. This is not new in the United States of America, it has been going on for over two hundred years and should have been stopped in the very beginning.

The second question is how could Kansas Power and Light Company be eligible to use the right of eminent domain? Are they owned and operated by the United States Government, or are they owned by the State Government? Of course, Kansas Power and Light Company is owned by neither the United States Government or the State Government, instead Kansas Power and Light Company is a private corporation. Therefore, Kansas Power and Light Company must abide by the Constitution of the United States of America. But Kansas Power and Light Company will claim it is a public utility. Kansas Power and Light Company can not honestly claim that it is a public utility, because it sells

electricity for profit and not just at costs. But Kansas Power and Light Company will claim it is supported by stockholders and, therefore, is a utility. The fact that it is supported by stockholders or not does not matter; General Motors and the Ford Motor Company are supported by stockholders, but they are not a public utility. Therefore, any judge, or judges, who would rule that eminent domain is constitutional would be more guilty of unfairness than Adolf Hitler.

If what I have been told and read in the newspaper is true, that all the money that Kansas Power and Light Company is using to build their new generating plant in Pottawatomie County is loaned to Kansas Power and Light Company by the United States Government, then Kansas Power and Light Company had better abide by the Constitution of the United States of America. Then we are getting into a case of taxpayers money being used against the American taxpayers themselves.

The man who came to our house in Wamego, Kansas, to talk to my mother, Mary Jane Quinn, in an effort to get her to sign a right of way easement for Kansas Power and Light Company to put a transmission line across some of her land, which she refused to do. The man admitted that

Carl Stitch had refused to let Kansas Power and Light Company put a transmission line across his land. But if Kansas Power and Light Company's eminent domain was so constitutional, why didn't they go ahead and continue in a Southwestern direction on across Carl Stitch's land? The man also stated that at first Kansas Power and Light Company had tried to build their transmission line much further South, close to U.S. Highway 24, but Kansas Power and Light Company had run into a stone wall with no one wanting the Kansas Power and Light Company's transmission line going across their property. Here again, if Kansas Power and Light Company's eminent domain is so constitutional, then no one could stop Kansas Power and Light Company from building their transmission line across their property. The man then explained that Kansas Power and Light Company decided to build their transmission line further North across more hilly land where the landowners were poorer and would not be financially able to stop Kansas Power and Light Company from building their transmission line across the landowners property.

6. Why are Kansas Power and Light Company building their new generating plant in Pottawatomie County

instead of at the edge of Topeka, Kansas? Because, I was told, when the last addition to the power plant at Tecumseh, Kansas, on the East edge of Topeka, Kansas, was built in 1957, that it would be the last addition to the power plant at that location. I asked why it would be the last addition at that location? Their reply was that the Kansas State Board of Health would not permit any more additions to the plant because of the way the plant was polluting the air.

7. The judges in the Federal Court System and in the State Court System have all taken an oath or affirmation to uphold the Constitution of the United States of America, but the real question is how many judges, after they have taken an oath or affirmation, really upholds the Constitution of the United States of America? The Constitution of the United States of America states (Amendment VII. Jury Trial In Civil Cases) "In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law." How many times have the judges at the Federal Court System level

and the State Court System level broken this important amendment in the Constitution of the United States of America?

REASONS FOR GRANTING THE WRIT

Jack P. Quinn is an American citizen of the United States of America, and as such is guaranteed a trial by jury by the Constitution of the United States of America as follows:

Amendment VII. Jury Trial In Civil Cases

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

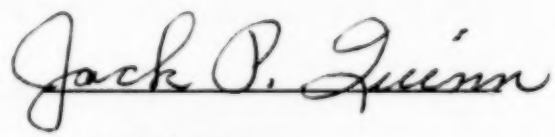
Article VI. General Provisions

This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, any

thing in the constitution or laws of any state to the contrary notwithstanding.

CONCLUSION

It is respectfully submitted that petition for a writ of certiorari should be granted.



Jack P. Quinn
908 Lincoln
Wamego, Kansas 66547

In his own behalf

APPENDIX

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

CIVIL NO. 77-4006

JACK P. QUINN

Plaintiff

v.

KANSAS POWER AND LIGHT COMPANY

Defendant

MINUTE ORDER

BY DIRECTION OF THE HONORABLE WESLEY E. BROWN:

IT IS ORDERED that this action be assigned to The Honorable George Templar, Senior Judge Assigned.

ARTHUR G. JOHNSON, Clerk

By Sharon L. Stark, Deputy Clerk

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF KANSAS

Civil Action File No. 77-4006

JACK P. QUINN

v.

KANSAS POWER AND LIGHT COMPANY

This action came on for (hearing) before the Court, Honorable George Templar Senior, United States District Judge, Assigned, presiding, and the issues having been duly (heard) and a decision having been duly rendered,

It is Ordered and Adjudged that this action be, and is hereby, dismissed.

Dated at Topeka, Kansas, this 25th day of May, 1977.

ARTHUR G. JOHNSON
Clerk of Court

Sharon L. Stark
Deputy Clerk

ENTERED IN THE DOCKET May 25, 1977

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

No. 77-4006

Jack P. Quinn
Plaintiff

v.

Kansas Power and Light Company
Defendant

ORDER SUSTAINING MOTION TO DISMISS

Plaintiff, Jack P. Quinn, filed pro se a complaint against defendant Kansas Power and Light Company, a corporation, which reads as follows:

> "I, Jack P. Quinn, hereby, on January 7, 1977, file a law suit in federal court against Kansas Power and Light Company, 818 Kansas Avenue, Topeka, Kansas. I, Jack P. Quinn, am filing this law suit in federal court against Kansas Power and Light Company on the grounds that Kansas Power and Light Company's claim of the power of eminent domain is unconstitutional. I, Jack P. Quinn, am requesting trial by jury. I, Jack P. Quinn, request the federal court to force Kansas Power and Light Company to pay any damage to property and court costs."

In the civil cover sheet included as a part of the file in this case, plaintiff sets forth as a brief statement of his cause that:

> "Suit is filed questioning the constitutionality of Kansas Power and Light Company's claim of eminent domain."

The defendant responded to plaintiff's claim with a motion to dismiss on the grounds that the complaint affirmatively shows that plaintiff has no cause of action against defendant and has failed to state a claim upon which relief can be granted. Thereafter in two subsequently filed documents, plaintiff has elaborated somewhat upon the basis for his contention that the Kansas Power and Light Company's (KPL's) exercise of the power of eminent domain is unconstitutional.

Filed
May 25, 1977
ARTHUR G. JOHNSON, Clerk
By Sharon L. Stark, Deputy

It is not made clear that plaintiff has any standing to maintain this action. The only reference made to property affected by eminent domain actions of KPL is that it may have affected property belonging to plaintiff's mother, Mary Jane Quinn. Since that circumstance is not challenged by defendant, we will proceed to consider the principal issue in which a challenge of the power of KPL to acquire a right-of-way across private lands in Kansas under eminent domain is made. Plaintiff insists that this power claimed by KPL violates the United States Constitution.

The plaintiff cannot as a general proposition successfully contend that KPL's exercise of eminent domain is unconstitutional. "Within its own jurisdiction, each state possesses the sovereign power of eminent domain." 26 Am.Jur.2d *Eminent Domain* S13, at 654 (1966). Kansas, by legislative enactment, had delegated such authority to Kansas Power and Light, and other entities. See K.S.A. 17-618. That such delegation is valid and proper is recognized generally and in Kansas. *Concerned Citizens, United, Inc. v. Kansas Power and Light Co.*, 215 Kan. 218, 523 P.2d 755 (1974); 26 Am.Jur. 2d, *supra*, S20; 1

Nichols, Law of Eminent Domain, S3.21(2) at 3-55 (3d rev. ed. 1976).

Plaintiff's challenges to the exercise of eminent domain by KPL are vague, and are constituted primarily of citations to different portions of the United States Constitution. We shall discuss them individually.

First, plaintiff has cited Article I, Section 10, Clause 1 of the Constitution. Plaintiff's underlining of the phrases which indicate that no State is to "pass any . . . law impairing the obligation of contracts" or "enter into any agreement of compact with another state" scarcely makes an argument against the universally recognized concept that the power of eminent domain inheres within the sovereign power of each state. 26 Am.Jur.2d, *supra* at S13.

Second, plaintiff cites Article III, Section 2 of the Constitution. The telling phrases in this section, according to plaintiff, are those which indicate that the federal courts shall have diversity jurisdiction, and that the Supreme Court of the United States shall have appellate jurisdiction. These facts are well known, and discussed in 6A Nichols, *supra* at S27.8 in relation to the doctrine of eminent domain. However, the best

argument plaintiff can make is that a taking by KPL must not violate the United States Constitution. As we shall see, plaintiff's contentions on this point are contrary to established law.

Third, plaintiff quotes the 14th Amendment to the Constitution, Section 1. This amendment is indeed relevant to the exercise of the power of eminent domain by a State or an entity to which a State has delegated the eminent domain power. At S8.1(2) of Nichols, *supra*, we find the following passage:

> "The fourteenth amendment to the United States Constitution throws the protection of the federal courts over an individual whose property is sought to be taken by a state without compensation. Such a deprivation would not be by due process of law."

A federal court, therefore, has the power to examine a taking to determine whether the requirements of due process have been met. These requirements are discussed in greater detail in S4.10 of Nichols, *supra:*

> "The essential elements of due process of law, in this respect, require that there be:
>
> (a) Notice and an opportunity to be heard
> (b) Before a competent tribunal
> (C) In an orderly proceeding which is
> (1) Adopted to the nature of the case,

(2) In accord with established rules which do not violate fundamental rights.

"Certain questions which arise in connection with the exercise of the power of eminent domain mandatorily require a judicial determination. Among such questions may be found:

(a) The existence of a public use;
(b) The adequacy of compensation;
(c) The validity of the delegation of the power of eminent domain.

"Due process of law, generally, does not guarantee any particular form or mode of procedure, nor is it required that the proceedings be in accord with the process of the common law. In fact, methods unknown to the common law may be utilized provided that they do not conflict with the underlying principles of such procedure according to the traditions of the common law. While, under ordinary circumstances, a judicial proceeding is required, this rule is not inflexible. In any event, whether the proceeding be judicial or administrative, the principle of due process must be adhered to."

Examining these standards, we find that the requirements of due process are generally met by the provisions governing eminent domain which are set out in K.S.A. 26-501 et seq. Plaintiff has not challenged the notice or opportunity to be heard in any particular case, nor has he challenged the existence of a public use. Plaintiff has

asserted in terms so vague as to be meaningless that the state district judge involved in the particular proceeding was "unreliable", but such obscure allegations do not support his claim. Plaintiff has also claimed the right to a jury trial, which shall be discussed presently. Further, plaintiff has questioned the adequacy of compensation, but plaintiff's remedy, if he owned any property condemned, was an appeal under K.S.A. 26-508, and it appears from his allegations that no such appeal was taken. The vague allegation that the compensation received was less than the fair market value is inadequate to merit further attention. Finally, plaintiff has challenged the validity of the delegation of the power of eminent domain, but the Kansas Supreme Court has sustained this grant of power in the case of *Concerned Citizens, United, Inc. v. Kansas Power and Light Co., supra.*

Next, plaintiff cites Article VI of the Constitution of the United States, which states, *inter alia,* that the Constitution and the laws made pursuant thereto shall constitute the "supreme law of the land." This provision does not prohibit the exercise of eminent domain under a legislative grant of power.

Fifth, plaintiff cites the Seventh Amendment to the

Constitution, apparently claiming the right to a jury trial in an eminent domain proceeding. It appears that as a general matter, there is no such right. See Nichols, *supra* at S4.105. In Kansas such a right to a jury trial is provided for Kansas Bill of Rights, Section 5; K.S.A. 26-509. But where other procedures are used to satisfy due process requirements, a jury trial is not mandatory.

The foregoing five passages from the Constitution were cited to the Court in plaintiff's first "brief" to the Court. In plaintiff's second submission, additional passages were quoted. The sixth passage quoted by plaintiff is the Fifth Amendment to the Constitution. However, this Amendment applies to the federal government, and not to the States. *Tilden v. United States*, 10 F.Supp. 377 (W.D. La. 1934); *State v. Kansas City*, 125 Kan. 88, 262 P. 1032 (1928). The concepts of the Fifth Amendment, as they may be embodied in the Fourteenth Amendment and thereby made applicable to the States, have already been discussed.

Finally, plaintiff has cited the Sixth Amendment to the United States Constitution, which deals with the rights of persons accused of crimes. This provision has no application here.

The most specific allegation made by plaintiff is that the power transmission lines, which were erected across his relative's land, were not constructed to form a straight line. KPL's decision as to how much land to take and which land to take was vested within KPL's "reasonable discretion", and such discretion is reviewable only for fraud, bad faith, and abuse of discretion. *Concerned Citizens, United, Inc. v. Kansas Power & Light Co., supra*, 523 P.2d at 764; *Shelor v. Western Power and Gas Company*, 202 Kan. 428, 449 P.2d 591 (1969). Plaintiff's allegations do not rise to a level adequate to make KPL's decision reviewable in the proceeding.

The rules of the Court require that a motion to dismiss a complaint may not be sustained unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claims which would entitle him to relief. *Swenson v. United States*, T-4665 (8-21-70), unreported.

Even construing plaintiff's allegations liberally, as we are bound to do, plaintiff could not prevail even if all his allegations were proved. In addition, we have serious questions as to plaintiff's standing which we have not discussed because they were not explicitly raised in defendant's motion to dismiss. Plaintiff has stated no

provable claim and defendant's motion to dismiss must be sustained.

IT IS THEREFORE ORDERED that this action be, and is hereby, dismissed.

Dated at Topeka, Kansas, this 24th day of May, 1977.

George Templar
Senior Judge, Assigned

APPENDIX B

NOVEMBER TERM — DECEMBER 30, 1977

Before Honorable Oliver Seth, Circuit Judge,
Honorable John C. Pickett, Circuit Judge, and
Honorable Robert H. McWilliams, Circuit Judge

No. 77-1467

JACK P. QUINN
Plaintiff-Appellant

v.

KANSAS POWER & LIGHT COMPANY
Defendant-Appellee.

The captioned appeal was assigned by the Court to Calendar D for disposition without oral argument. The Court invited the parties to file memoranda explaining why the judgment of the district court should not be affirmed. Both appellant and appellee filed memoranda.

Upon consideration of the record in the trial court and the file of the appeal in this Court, and the memoranda of

the parties, it is ordered:

1. The judgment of the United States District Court for the District of Kansas is affirmed for the reasons cited in the Order Sustaining Motion to Dismiss filed May 25, 1977.

2. A copy of this order shall be certified to the United States District Court for the District of Kansas as and for the mandate.

Howard K. Phillips
Clerk, U.S. Court of Appeals
Tenth Circuit

Filed Jan. 3, 1978

by Delaine Coller, Deputy Clerk
Arthur K. Johnson, Clerk

By Karen J. Christian, Deputy